

Draft Environmental Assessment



Scotty Brown Bridge FISHING ACCESS SITE ACQUISITION AND IMPROVEMENTS

March 2007



***Montana Fish,
Wildlife & Parks***

**Scotty Brown Bridge Fishing Access Site
Acquisition and Improvements
Draft Environmental Assessment
MEPA, NEPA, MCA 23-1-110 CHECKLIST**

PART I. PROPOSED ACTION DESCRIPTION

1. **Type of proposed state action:** Montana Fish, Wildlife & Parks proposes to exchange approximately 7 acres of land it owns in Powell Co for approximately one acre of private land adjacent to the Blackfoot River for inclusion in the Fishing Access Site program. Once acquired, the existing 4-stall parking lot would be redesigned to allow for up to 6 vehicles and trailers, and hand launch boating access would be available. As part of the agreement, the old county road right-of way associated with the previous Scotty Brown Bridge would be formally abandoned.
2. **Agency authority for the proposed action:** The 1977 Montana Legislature enacted statute 87-1-605, which directs Fish, Wildlife & Parks (FWP) to acquire, develop and operate a system of fishing accesses. The legislature established an earmarked funding account to ensure that this fishing access site function would be established.

7-14-2615 (3). Abandonment or vacation of county roads. The board may not abandon a county road or right-of-way used to provide existing legal access to public land or waters, including access for public recreational use as defined in [23-2-301](#) and as permitted in [23-2-302](#), unless another public road or right-of-way provides substantially the same access.
3. **Name of project:** Scotty Brown Bridge Fishing Access Site Acquisition and Improvements.
4. **Name, address and phone number of project sponsor (if other than the agency):** Montana Fish, Wildlife, and Parks is the project sponsor.
5. **If applicable:**
Estimated Construction/Commencement Date: Summer 2007
Estimated Completion Date: Fall 2007
Current Status of Project Design (% complete): 75. The design plan has been agreed upon by all parties, including the Meredith's and the Nature Conservancy.

6. **Location affected by proposed action (county, range and township):**



Figure 1. The proposed project is located in MFWP Region 2.

The Scotty Brown Bridge FAS would be located in the NE1/4 of Section 33, T15N, R13W, Powell County, Mt, within Montana FWP Region 2. The seven-acre parcel proposed for exchange is located in the S1/2 of Section 28, T15N, R13W, Powell County.

7. **Project size -- estimate the number of acres that would be directly affected that are currently:**

	<u>Acres</u>		<u>Acres</u>
(a) Developed:		(d) Floodplain	<u>0</u>
Residential	<u>0</u>		
Industrial	<u>0</u>	(e) Productive:	
(b) Open Space/Woodlands/Recreation	<u>8</u>	Irrigated cropland	<u>0</u>
		Dry cropland	<u>0</u>
(c) Wetlands/Riparian Areas	<u>0</u>	Forestry	<u>0</u>
		Rangeland	<u>0</u>
		Other	<u>0</u>

8. **Listing of any other Local, State or Federal agency that has overlapping or additional jurisdiction.**

(a) **Permits:** permits will be filed at least 2 weeks prior to project start.

<u>Agency Name</u>	<u>Permit</u>
Dept. of Environmental Quality	318 Short-Term Water Quality Turbidity Related to Construction Authorization
Montana Fish, Wildlife & Parks	124 SPA Stream Protection Permit
Powell County Floodplain Cord.	Floodplain Construction Permit (if needed)
The project manager will contact the county flood plain coordinator to determine if the minimal development that is proposed requires a floodplain construction permit prior to beginning.	

(b) **Funding:**

<u>Agency Name</u>	<u>Funding Amount</u>
Montana Fish, Wildlife & Parks	Land Exchange
Montana Fish, Wildlife & Parks	\$20,000

(c) Other Overlapping or Additional Jurisdictional Responsibilities:

<u>Agency Name</u>	<u>Type of Responsibility</u>
Powell County Planning Board	Approval
Powell County Attorney	Road Abandonment
Powell County Commission	Parking Restriction along road

9. Narrative summary of the proposed action or project including the benefits and purpose of the proposed action:

Montana Fish, Wildlife & Parks (FWP) proposes acquiring a new site for inclusion in the state-wide Fishing Access Site (FAS) program. The new site would be called Scotty Brown Bridge FAS and is located on the Blackfoot River at river mile 45. Russell Gates Memorial FAS is the nearest downstream public access site is located at river mile 40. River Junction FAS is the next upstream site and is located at river mile 52.

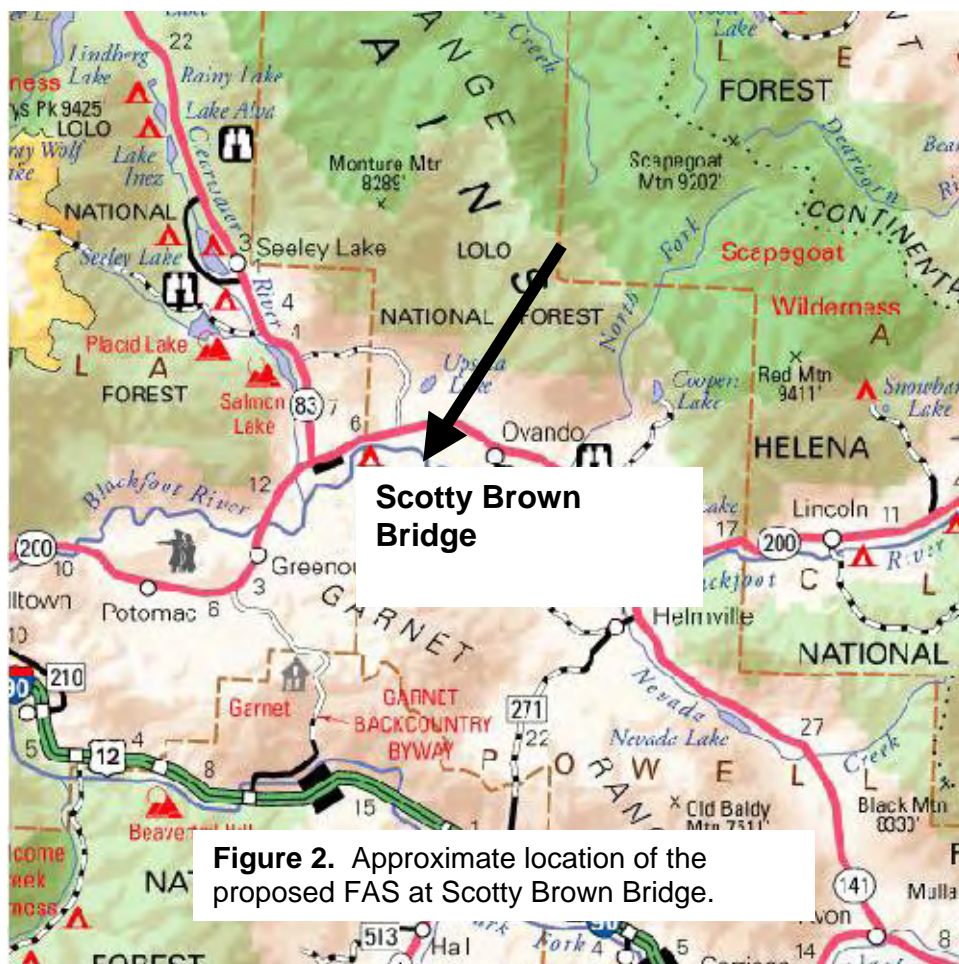


Figure 2. Approximate location of the proposed FAS at Scotty Brown Bridge.

The Blackfoot River, one of twelve renowned “Blue Ribbon” rivers in Montana and a major tributary of the Clark Fork of the Columbia River, begins at the junction of Beartrap and Anaconda creeks near the Continental Divide. The river flows west 132 miles to its mouth at

Bonner, Montana. Public use of the Blackfoot River has historically been heavy and it remains a very popular recreational river today. The section from the confluence with the Clearwater River to the North Fork of the Blackfoot consistently ranks 8th or 9th in level of fishing pressure in the Region, with 11,355 angler days in 2003. Game fish opportunities include brown trout, mountain whitefish, rainbow trout, and westslope cutthroat trout. Bull trout, a federally listed Endangered species, is also present at the site. Other water-based activities such as floating, tubing, and swimming are also extremely popular from the North Fork on down.

Prior to the 1990's, the public had river access in the area of the Scotty Brown Bridge on Scotty Brown Bridge Road in Powell County. The public gained access directly from the bridge abutments, from adjacent private property by permission from landowners, or by trespassing on adjacent privately owned lands. Increased use and associated instances of trespassing, litter, vandalism and other problems created conflict with neighboring private property owners. In 1993, the old one-lane log bridge was officially determined to be unsafe, and Powell County authorized the Montana Dept of Transportation (MDT) to design a new bridge and road, and to acquire the right-of-way easements needed in order to construct the bridge. Federal funds paid for the project. The new design provided for the road on the north side to be straightened out, widened and elevated, with a new two-lane plus sidewalk bridge constructed. On the south side, the road was realigned slightly upstream to meet the south end of the new bridge.

The road easement that was initially sought by MDT was a significant enlargement of the existing prescriptive road easement which was 22 feet wide on the north end of the bridge, and of the recorded 40 feet wide easement on the south. MDT had recommended the large easement partially in order to provide for new public access to the river, even though this was not a permitted use of the bridge funds. Adjacent landowners disagreed with these plans. They contended that the only public access to the river was by the landowners' permission or by trespass on their adjacent lands. MDT threatened to initiate condemnation proceedings to acquire the large road easement. The Powell County Commissioners and the landowners ultimately settled. The Powell County Commissioners agreed to accept a 60-ft easement that could be used only for road and bridge purposes. The landowners' recorded easement documents limit the use of the easement to road and bridge use, and specify that the easement shall not be used for public access to the river or recreational uses. Further, the easement documents state that the new easement was in substitution for and enlargement of the old road and bridge easement.

As part of the settlement, Powell County acknowledged that the landowners had voluntarily provided parking for three to four cars (but not trailers) on their lands adjacent to the bridge. The landowners agreed to continue to provide parking for up to four cars, but not trailers, consistent with past practices. Powell County Commissioners agreed to prohibit parking along the county road for 300 yards on either side of the bridge as a method of limiting use at the site and for public safety. The landowners and the Powell County Commissioners entered into a written agreement setting forth their understandings, referred to as the "Brunner Agreement". A four-stall parking area (see Figure 3) was constructed on the Brunners' private land on the north side of the river west of the bridge, along with a narrow "river trail" which was a barbed wire-bound two-ft wide path from the parking area to the river.



Figure 3. Existing four-stall parking area.

The Brunner Agreement (binding upon the parties' successors and assigns) allowed for limited public access. Some members of the public contended that general public access to the river was lost or compromised, and they objected to the design of the parking area which prohibited trailers, and the installation of the barbed wire path leading to the river on the Brunners' property. Some members of the public threatened to stage a float-in or other form of protest about what they believed was the loss of historic public access to the Blackfoot River in this area.

In response to the controversy, FWP began exploring the possibility of acquiring land adjacent to the bridge and forming a new Fishing Access Site, which would provide river access to the public and also hopefully reduce public misuse of adjacent private lands. During this time, the area adjacent to the bridge where the parking area is located was sold to Tom and Lynn Meredith (the "Merediths") who agreed to work with FWP towards this goal. Pending final agreement, the Merediths have permitted FWP to manage the site. The barbed wire has been removed, and both fishing and hand launching of boats are permitted. After much negotiation, a permanent arrangement has since been reached, which this EA addresses.

In this agreement, the Merediths will exchange the one-acre site adjacent to the road and river, part of which is currently used for public parking and river access, (hereafter referred to as Lot B-1, see Appendix C for complete legal description) in exchange for a 7-acre sliver of land (hereafter referred to as Tract 1, see Appendix C for complete legal description) owned by FWP elsewhere in the area (see Figures 4, 5, and 6). Upon completion of a formal appraisal and exchange, FWP will construct a new, larger parking lot in the same area as the old one that will improve public safety, allow for easier maneuverability, and will accommodate boat trailers (see Figure 7). The new parking area will still only have four parking spaces, but FWP has the right to establish up to two additional drive-in parking spaces on the site in the future if that is deemed appropriate; as is stated in the Reservation and Grants of Real Property Covenants

(see Appendix D, Exhibit B). The site design and land exchange agreement allows for management of the site for access to the river for boat launch and take out. To protect both sensitive fisheries resources and reduce social crowding, no formal boat ramp or vehicle access to the river for boat trailers will be provided. Boat launch and take out will remain unimproved, requiring hand-carry of equipment to and from the river. The site will be managed as a primitive site (see proposed Site Plan in Figure 7 and Covenants and Servitudes, Appendix D).

An additional issue related to the proposed exchange is the fact that a conservation easement exists on Merediths' property, including the parcel slated for exchange to FWP, Lot B-1. Because conservation easements remain in place regardless of ownership, this easement would remain on Lot B-1 after the exchange and FWP takes ownership. The Nature Conservancy, which holds the conservation easement on the Meredith property, has agreed to amend the easement to permit the transfer of the site to FWP. The draft Amendment to Deed of Conservation Easement states in part that:

“Whereas, it is to the public benefit to have Montana Fish, Wildlife & Parks own and manage the Site for public access purposes and;... while the Site shall remain subject to the terms and conditions of the Easement, nothing contained therein or in the Amendment shall be deemed to prohibit or limit FWP's management and modification of the Site as a public access site for both fishing and boating, including commercial use, and parking for cars and trailers”.

The Nature Conservancy agreed to modify the conservation easement and the Merediths agreed to convey the site to FWP only if covenants and servitudes are placed on the property at the time of transfer to FWP (see Appendix D). In addition, the Merediths are willing to exchange the site at the bridge to FWP for Tract 1 only if Powell County Commissioners formally abandon the old right-of-way from the original road and bridge (the “old roads”, see Figure 8). The area of the old road on the north side of the new bridge would ultimately be conveyed to FWP along with the entire site. The area of the old road on the south side of the bridge would be conveyed to the adjacent landowners, Roy and Susan O'Connor, et al. (“Heart Bar Heart Ranch”). The abandonment of the “old roads” is required for several reasons:

1. Landowners (currently the Merediths and Heart Bar Heart Ranch) dispute the right of the public or Powell County to use the “old roads” for access to the river. They contend that access at the site was gained by permissive parking on the landowners' lands alongside the old road in place before construction of the new bridge in 1994, or by trespassing on private lands adjacent to the bridge; and that such use did not create a right in the public or Powell County to use these private lands to gain access to the river.
2. Abandonment formally implements the Brunner Agreement, which requires the Powell County Commissioners to manage the road easement and bridge area in a fashion that limits parking as long as the parking area is located in the area of the new bridge. The Commissioners cannot do anything with the lands that are arguably part of the “old roads.”

3. The easements granted by Heart Bar Heart Ranch and the Brunners for the road to the new bridge were given under threat of condemnation. The easements specifically note that they are “in substitution for” the old road easements. If the County Commissioners assert a right to the “old roads”, the landowners will argue, among other things, that the new road easements are void for lack of consideration, were fraudulently obtained by Powell County, or will raise other claims for damages from Powell County and the Commissioners individually resulting from such actions.
4. Some members of the public years ago alleged that they had a right to use the “old roads” because they have not been formally abandoned. Such use, however, is in violation of the agreement reached by Powell County with the landowners to induce them to grant the new road easements to Powell County.
5. The new bridge was constructed in 1994, and the Brunners limited the parking at the site to 3-4 cars (not trailers) on the Brunners’ lands until the Merediths permitted FWP to manage the site 3 years ago.
6. The “old roads” do not provide appropriate public access to the river. If members of the public used the “old roads” to get on and off of the river, they accessed the banks under the old bridge, and then walked up the banks to the road. Such access is difficult at best. The new access site managed by FWP will provide more useful, safe and convenient access for the public to the river.
7. In order for FWP to manage the new site appropriately, and in order to avoid conflicts among the County, the public and landowners, including FWP, the “old roads” should be abandoned so there cannot be any arguments that the FWP site must be shared with members of the public in an uncontrolled fashion.
8. The abandonment of the “old roads” will be conditioned upon the Merediths’ and FWP’s accomplishing the exchange and the conveyance of the 1 acre site to FWP.

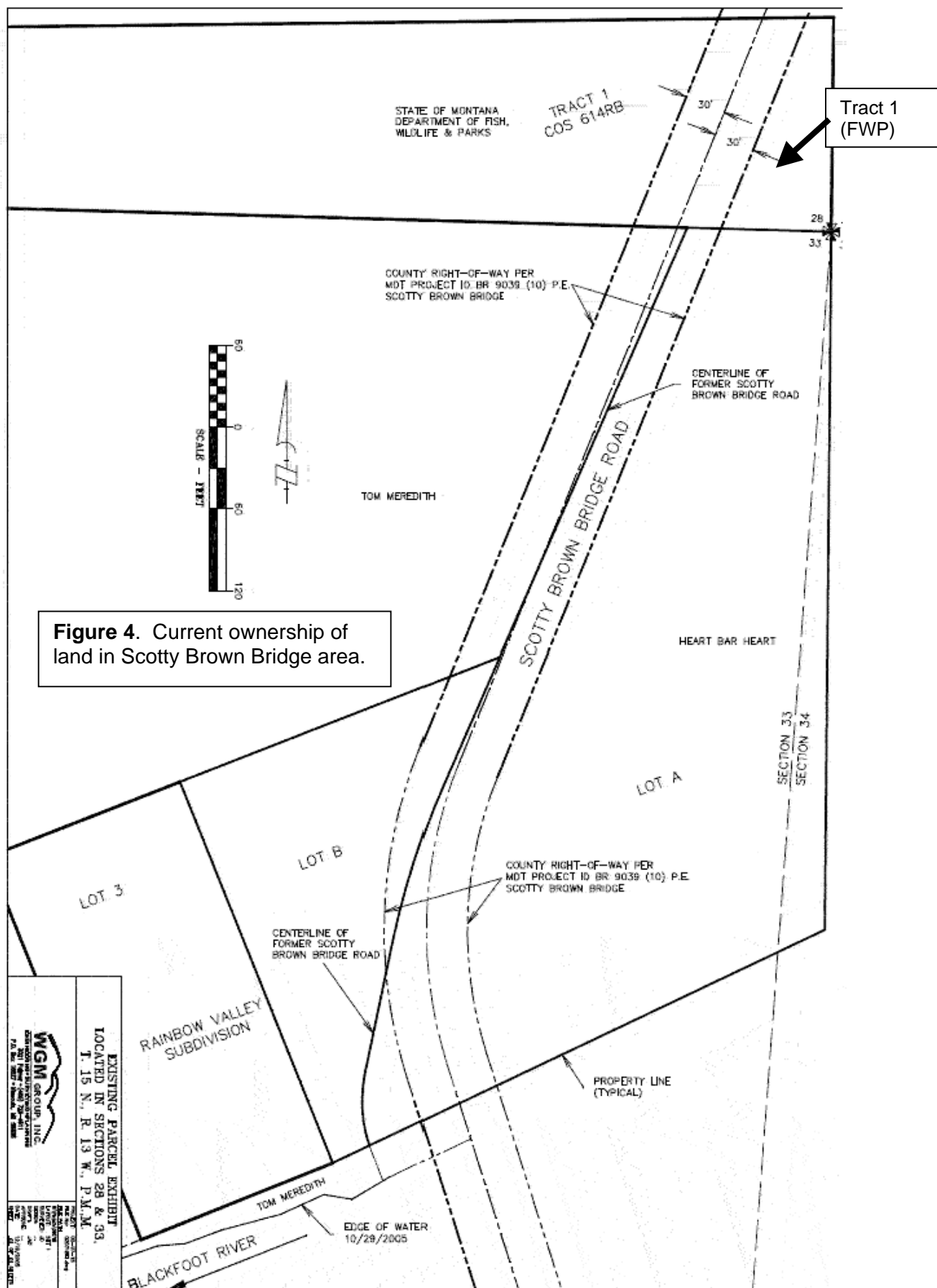
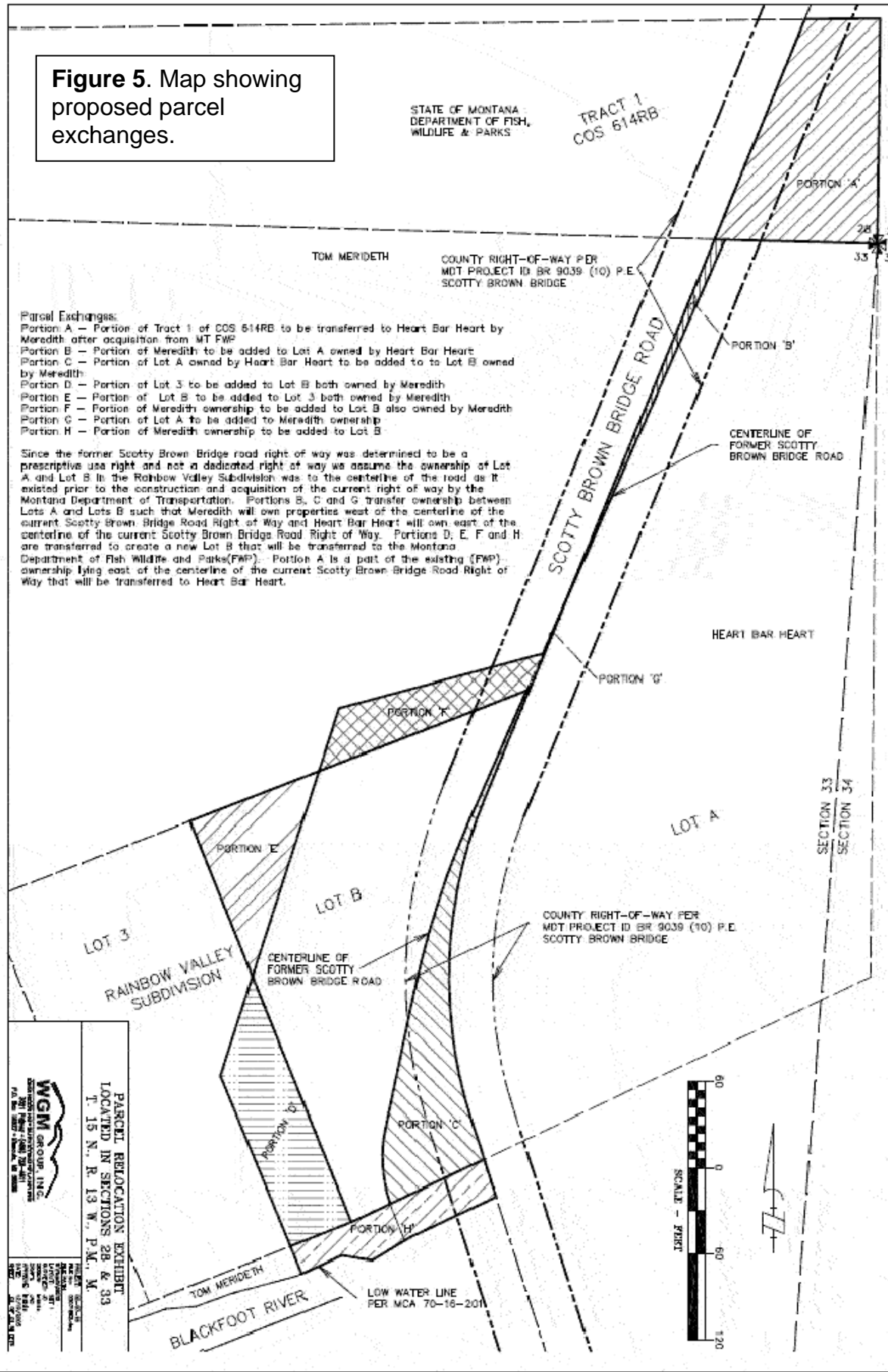


Figure 5. Map showing proposed parcel exchanges.



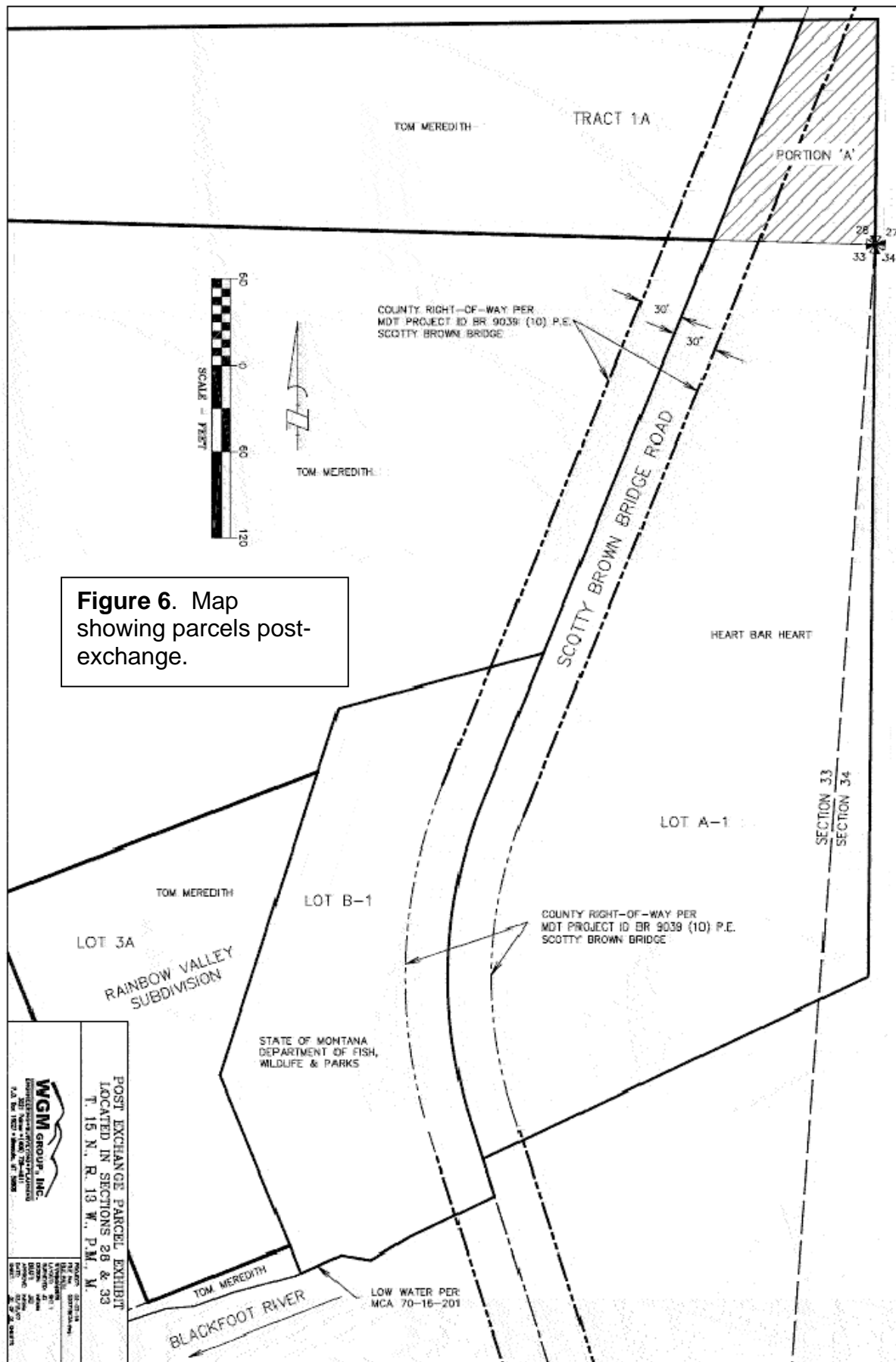


Figure 7. Proposed site design for Scotty Brown Bridge FAS.

Footprint of existing parking area for comparison.

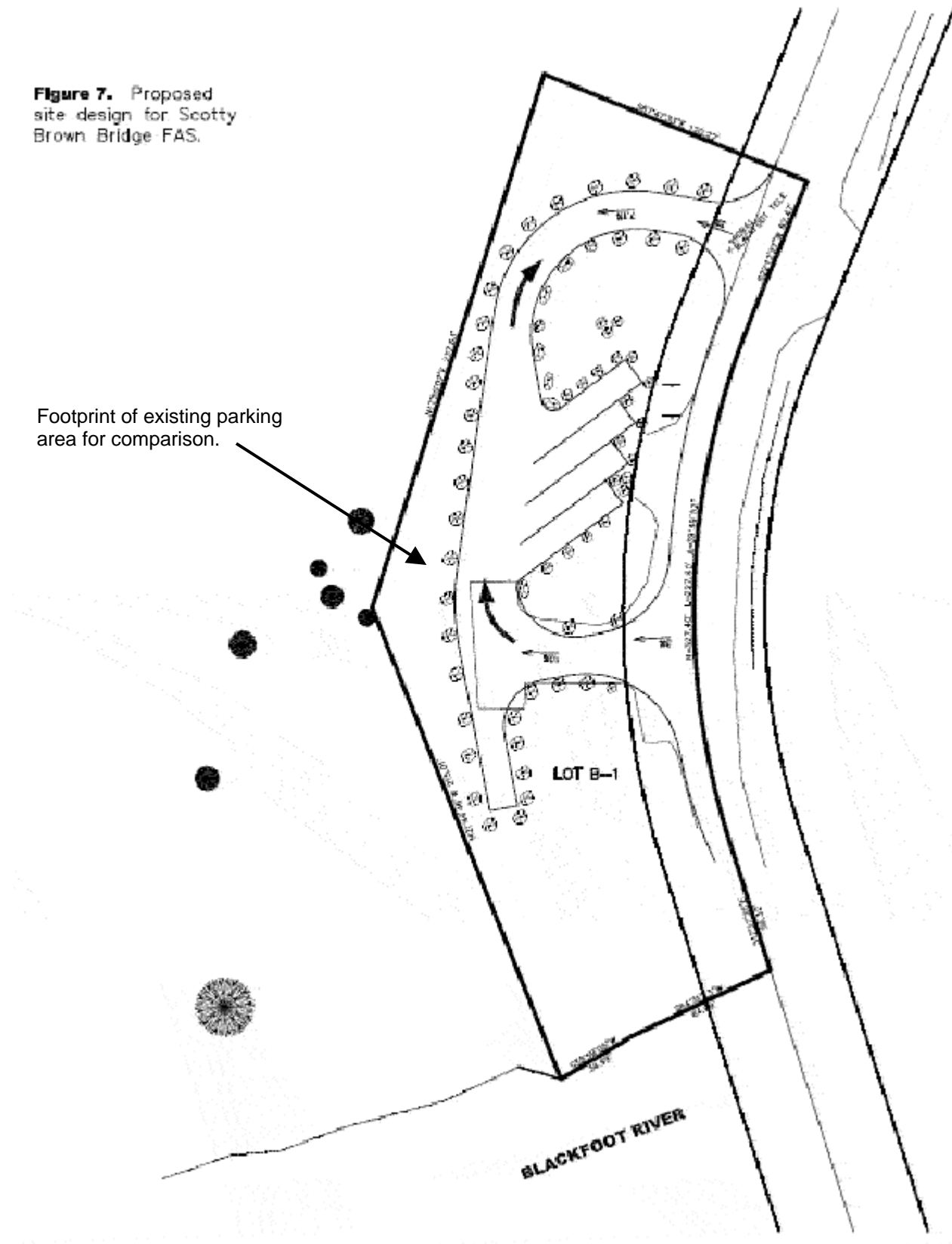
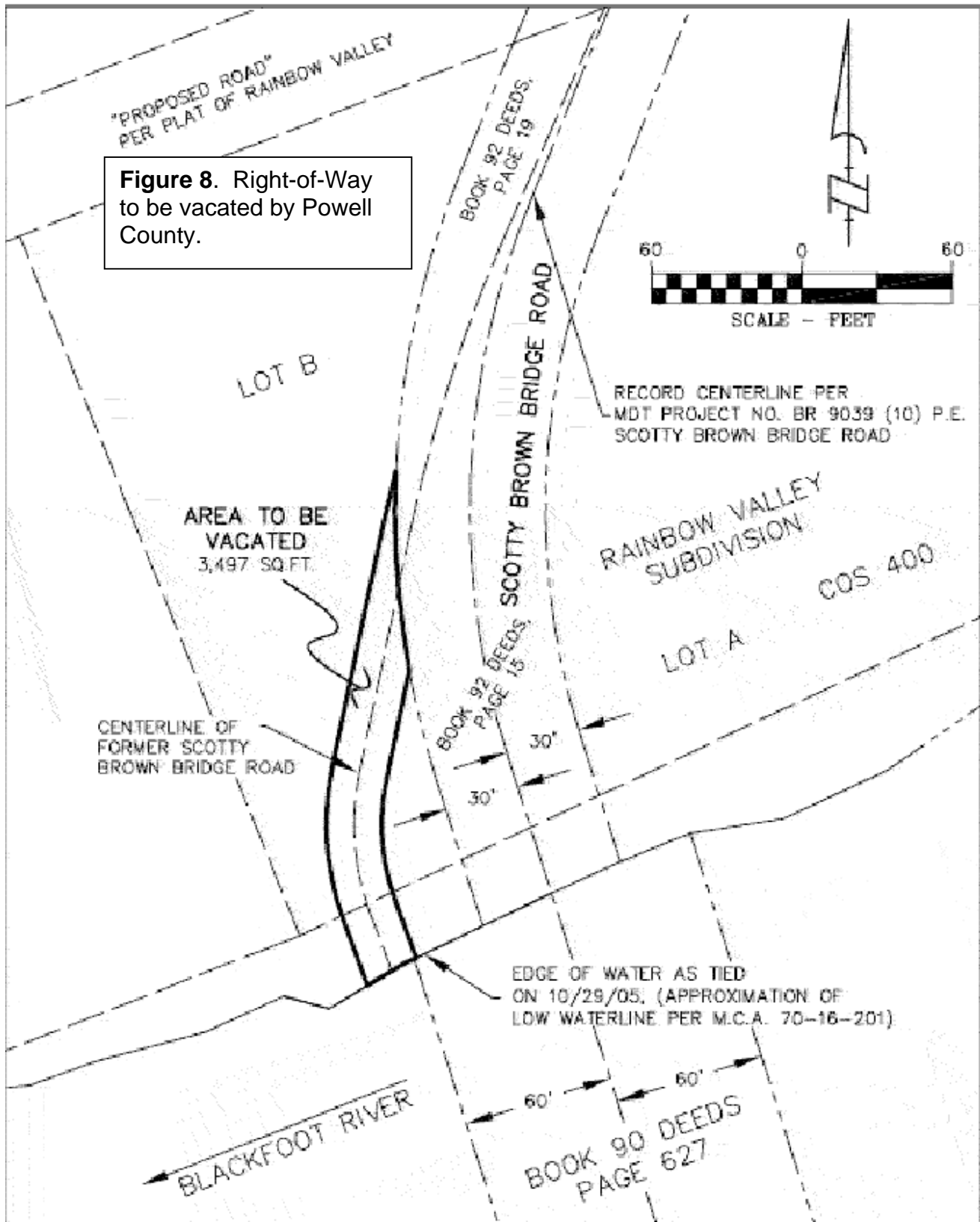


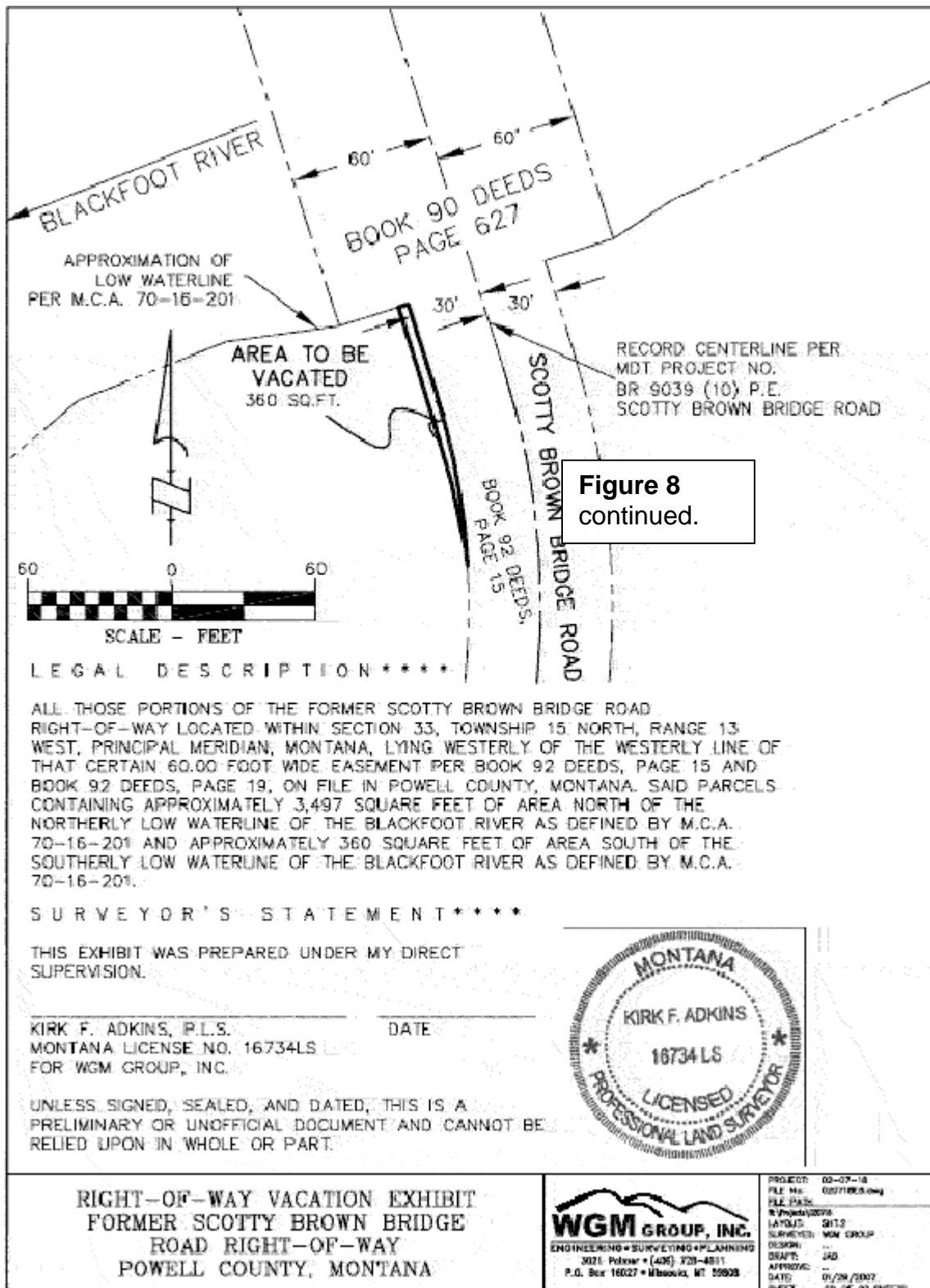
Figure 8. Right-of-Way to be vacated by Powell County.



RIGHT-OF-WAY VACATION EXHIBIT
FORMER SCOTTY BROWN BRIDGE
ROAD RIGHT-OF-WAY
POWELL COUNTY, MONTANA

WGM GROUP, INC.
ENGINEERING • SURVEYING • PLANNING
3021 Palmer • (406) 728-4911
P.O. Box 10027 • Missoula, MT 59808

PROJECT: 02-07-10
FILE: 101
FILE: 101.04
S:\Projects\020710\020710.dwg
LAYOUT: SHT.2
SURVEYED: WGM GROUP
DESIGN: JAD
DRAFT: JAD
DATE: 01/28/2007
SHEET: 01 OF 02 SHEETS



There has been past negative publicity and a great deal of pressure on FWP (particularly Region 2) and Powell County to resolve this historic access issue. If conceptually approved by the Commission, FWP will proceed with the proposed land exchange. The proposed action is the result of several years of talks, planning, and negotiations, and appears to be the best

method for protecting the rights and interests of all parties involved. The public would retain access to the Blackfoot River at that location, visitation would be limited, but public access would be secured in perpetuity.

PART II. ENVIRONMENTAL REVIEW

- 1. Description and analysis of reasonable alternatives (including the no action alternative) to the proposed action whenever alternatives are reasonably available and prudent to consider and a discussion of how the alternatives would be implemented:**

Alternative A: No Action

Under the No Action Alternative, FWP would not acquire the one-acre site adjacent to the Blackfoot River for inclusion in the FWP Fishing Access Site (FAS) program in exchange for seven acres it owns to the north. No improvements would be made to the site, and the parcel would remain under private ownership. FWP would continue to help the private landowner manage the site for the time being. This Alternative is not preferred for numerous reasons.

1) The existing parking area is suitable only for single vehicles. 2) Boat launching would not be secured in perpetuity. 3) Long-term access is not guaranteed because owners of the parcel might change or terminate the agreement permitting FWP to manage the site. 4) Management decisions are made unnecessarily complicated because of multiple party inputs.

Alternative B:

Under Alternative B, FWP would engage in the proposed land exchange with Tom Meredith, thus acquiring the one-acre parcel adjacent to the Blackfoot River and forming a permanent FAS there. However, instead of a low level of development, FWP would construct a larger parking area, a vehicle-accessible boat ramp, and install a vault latrine. This Alternative is no longer being considered because of concerns that increased visitation and fishing pressure would negatively impact several species of fish in the Blackfoot River, particularly Bull Trout, which are a federally listed threatened species and which rely heavily on this stretch of the Blackfoot for thermal refuge in the summer. Also, this level of development is prohibited in the Conservation Easement between the Merediths and The Nature Conservancy. The other adjacent landowner, Heart Bar Heart Ranch, is also strongly against more intensive development of the site.

Preferred Alternative C: Proposed Action

Note: a detailed evaluation of the Proposed Action is included in Part VI. Environmental Review Checklist beginning on page 14.

Under the Preferred Alternative C, FWP would, following a formal appraisal, exchange approximately 7 acres of land it owns for approximately 1 acre of land currently owned by the Merediths for the establishment of a permanent FAS on the Blackfoot River. The site is currently managed as public access and contains a four-stall gravel parking area, but FWP would redesign the site to allow for trailer parking and offloading of boats for hand launching. The new parking area will still only have four parking spaces, but FWP has the right to

establish up to two additional drive-in parking spaces on the site in the future if that is deemed appropriate; as is stated in the Reservation and Grants of Real Property Covenants (see Appendix D, Exhibit B). This is the proposed Alternative because it represents the best compromise among all parties. The public would retain access to the Blackfoot River at that location, and while visitation numbers would be limited, parking would be available for trailers for offloading boats for hand launching at the site. Such facilities are an upgrade from the current parking area and from historic access opportunities from the bridge shoulder. Private landowners would be free from the headache and potential liability of owning land used for public access, and should see a sharp reduction in problems such as trespass, litter, and vandalism from river users. Parking on the road shoulder would still be prohibited for 300 yards on either side of the bridge. The fisheries resource would continue to be protected from over-use and stress by continuing to control visitation numbers and from active management by FWP.

2. Evaluation and listing of mitigation, stipulation, or other control measures enforceable by the agency or another government agency:

There are no formal stipulations of mitigation or other controls associated with the proposed action. This action does not involve any permits or granting of a license on which stipulations would be placed.

PART III. PUBLIC PARTICIPATION

1. Describe the level of public involvement for this project if any, and, given the complexity and the seriousness of the environmental issues associated with the proposed action, is the level of public involvement appropriate under the circumstances?

The public will be notified by way of press releases; legal notices in the *Missoulian*, the *Helena Independent Record*, and the *Silver State Post*; and by public notice on the Fish, Wildlife & Parks web page: <http://fwp.mt.gov/publicnotices>. Individual notices will be sent to the region's standard EA distribution list and to those that have requested one.

2. Duration of comment period, if any.

A 30-day comment period is proposed, and it will run from March 22 through April 23, 2007. This level of public involvement is appropriate for this scale of project.

PART IV. EA PREPARATION

1. Based on the significance criteria evaluated in this EA, is an EIS required?

Based on an evaluation of the primary, secondary, and cumulative impacts to the physical and human environment under the Montana Environmental Protection Act (MEPA), this environmental review found no significant impacts from the proposed land exchange and site development at Scotty Brown Bridge. In determining the significance of the impacts, FWP assessed the severity, duration, geographic extent, and frequency of the impact, the probability that the impact would occur or

reasonable assurance that the impact would not occur, growth-inducing or growth inhibiting aspects of the impact, the importance to the state and to society of the environmental resource or value affected, and precedent that would be set as a result of the proposed action that would commit FWP to future actions; and potential conflicts with local, federal, or state laws. Therefore, an EA is the appropriate level of review and an EIS is not required.

2. Name, title, address and phone number of the person(s) responsible for preparing the EA:

Allan Kuser
FAS Coordinator
1420 East 6th Ave
Helena, MT 59620
(406)444-7885

Lee Bastian
Regional Parks Manager
3201 Spurgin Rd.
Missoula, MT 59804
(406)542-5517

Linnaea Schroeer-Smith
Independent Contractor
1027 9th Ave
Helena, MT 59601
(406)495-9620

3. List of agencies consulted during preparation of the EA:

Montana Fish, Wildlife & Parks
Parks Division
Wildlife Division
Fisheries Division
Design & Construction Bureau
Lands Division

Montana State Historic Preservation Office (SHPO)

Montana Department of Commerce – Tourism

Montana Natural Heritage Program – Natural Resources Information System (NRIS)

PART VI. ENVIRONMENTAL REVIEW CHECKLIST

Evaluation of the impacts of the Proposed Action including secondary and cumulative impacts on the Physical and Human Environment.

A. PHYSICAL ENVIRONMENT

1. <u>LAND RESOURCES</u> Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. **Soil instability or changes in geologic substructure?			X			1a.
b. Disruption, displacement, erosion, compaction, moisture loss, or over-covering of soil, which would reduce productivity or fertility?			X		yes	1b.
c. **Destruction, covering or modification of any unique geologic or physical features?		X				
d. Changes in siltation, deposition or erosion patterns that may modify the channel of a river or stream or the bed or shore of a lake?		X				
e. Exposure of people or property to earthquakes, landslides, ground failure, or other natural hazard?		X				
f. Other:		X				

Narrative Description and Evaluation of the Cumulative and Secondary Effects on Land Resources (attach additional pages of narrative if needed):

- 1a. The proposed project would not alter geologic substructure and would minimally impact soil stability. The graveled parking area would be located in the 100-year flood plain area on a bench above the river. Surface run-off from the parking lot would be minimal, due to low slope (0-2%) and porous soil.
- 1b. The construction associated with this project would result in disruption and displacement of less than one acre of land during construction, and permanent compaction, moisture loss, and over-covering of soil of approximately 1/6 of an acre. The existing parking area would be removed and reclaimed after the proposed parking area's completion.

2. <u>AIR</u> Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. **Emission of air pollutants or deterioration of ambient air quality? (Also see 13 (c).)			X			2a.
b. Creation of objectionable odors?		X				
c. Alteration of air movement, moisture, or temperature patterns or any change in climate, either locally or regionally?		X				
d. Adverse effects on vegetation, including crops, due to increased emissions of pollutants?		X				
e. ***For P-R/D-J projects, will the project result in any discharge, which will conflict with federal or state air quality regs? (Also see 2a.)						
f. Other:		X				

Narrative Description and Evaluation of the Cumulative and Secondary Effects on Air Resources (attach additional pages of narrative if needed):

2a. Minor amounts of dust and vehicle emissions will be created by heavy equipment during construction of the parking area.

3. <u>WATER</u> Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated*	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. *Discharge into surface water or any alteration of surface water quality including but not limited to temperature, dissolved oxygen or turbidity?		X				
b. Changes in drainage patterns or the rate and amount of surface runoff?			X			3b.
c. Alteration of the course or magnitude of floodwater or other flows?		X				
d. Changes in the amount of surface water in any water body or creation of a new water body?		X				
e. Exposure of people or property to water related hazards such as flooding?		X				
f. Changes in the quality of groundwater?		X				
g. Changes in the quantity of groundwater?		X				
h. Increase in risk of contamination of surface or groundwater?		X				
i. Effects on any existing water right or reservation?		X				
j. Effects on other water users as a result of any alteration in surface or groundwater quality?		X				
k. Effects on other users as a result of any alteration in surface or groundwater quantity?		X				
l. ****For P-R/D-J, will the project affect a designated floodplain? (Also see 3c.)						
m. ***For P-R/D-J, will the project result in any discharge that will affect federal or state water quality regulations? (Also see 3a.)						
n. Other:		X				

Narrative Description and Evaluation of the Cumulative and Secondary Effects on Water Resources (attach additional pages of narrative if needed):

- 3b. The proposed parking area is slightly larger than the existing parking area and therefore would result in a slightly higher amount of surface run-off. The amount would not be significant.

4. VEGETATION Will the proposed action result in?	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Changes in the diversity, productivity or abundance of plant species (including trees, shrubs, grass, crops, and aquatic plants)?			X			4a.
b. Alteration of a plant community?			X			4b.
c. Adverse effects on any unique, rare, threatened, or endangered species?		X				4c.
d. Reduction in acreage or productivity of any agricultural land?		X				
e. Establishment or spread of noxious weeds?						
f. ****For P-R/D-J, will the project affect wetlands, or prime and unique farmland?						
g. Other:		X				

Narrative Description and Evaluation of the Cumulative and Secondary Effects on Vegetation (attach additional pages of narrative if needed):

- 4a. The vegetation of the Scotty Brown Bridge site consists of some ponderosa pine trees on the upper bench, and grasses and forbs on the river bank and meadow. There is very little understory. The development that FWP has proposed would not cause significant changes to the diversity or productivity of the plant community. Grasses and forbs and perhaps two or three small trees would be removed in all of the Alternatives except the No Action Alternative. The loss of these trees, grasses or forbs is not significant from a biological standpoint, and all areas would be reseeded, revegetated, or otherwise reclaimed after construction completion.
- 4b. Please see Comment 4a.
- 4c. A search of the Montana Natural History Program database did not reveal any known populations of vegetative species of concern within the larger Scotty Brown Bridge area.
- 4e. Noxious weeds such as spotted knapweed have been observed on the Scotty Brown Bridge site but are at relatively low densities. If the proposed project is accepted FWP will initiate weed control on the site in accordance with methods outlined in the Region 2 Weed Management Agreement with the Powell County Weed Board, and this control would be ongoing.

** 5. <u>FISH/WILDLIFE</u> Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Deterioration of critical fish or wildlife habitat?		X				
b. Changes in the diversity or abundance of game animals or bird species?		X				5b.
c. Changes in the diversity or abundance of nongame species?		X				5c.
d. Introduction of new species into an area?		X				
e. Creation of a barrier to the migration or movement of animals?						
f. Adverse effects on any unique, rare, threatened, or endangered species?		X				5f.
g. Increase in conditions that stress wildlife populations or limit abundance (including harassment, legal or illegal harvest or other human activity)?		X				5g.
h. ****For P-R/D-J, will the project be performed in any area in which T&E species are present, and will the project affect any T&E species or their habitat? (Also see 5f.)						
i. ***For P-R/D-J, will the project introduce or export any species not presently or historically occurring in the receiving location? (Also see 5d.)						
j. Other:		X				

Narrative Description and Evaluation of the Cumulative and Secondary Effects on Fish and Wildlife (attach additional pages of narrative if needed):

- 5b. It is unlikely that the proposed project would cause any changes in the diversity or abundance of game species due to the project's small scope and the previous disturbance of and current public use of the Scotty Brown Bridge site.
- 5c. Please see Comment 5b.
- 5f. A search of the Montana Natural Heritage Program Database showed that four species of concern might occur in the larger Scotty Brown Bridge area. The property within the historic range of the Canada Lynx, a threatened species, but it is unlikely that this species, should it occur in the area, would be disturbed by the proposed project, due to its small scope, previous disturbance and current public use of the site. Westslope cutthroat trout and bull trout (both considered imperiled native species) can be found in this section of the Blackfoot River, and all FWP fishing regulations will apply and be enforced. These regulations stipulate that anglers cannot purposely attempt to catch bull trout, and if they catch one by mistake they must release it immediately. Westslope cutthroat trout are also catch-and-release only. This section of river is a critical bull trout recovery area and requires that management of the FAS consistent with recovery of bull trout. One of the reasons that visitation and use of the proposed Scotty Brown Bridge FAS would be limited is to protect bull trout from excessive angling pressure, including harassment, accidental hooking and illegal harvest. A sign stating these fishing regulations will

be installed on site. Please see Appendix 2 for a complete discussion of all Species of Concern found within the larger Scotty Brown Bridge area.

- 5g. The proposed improvements to the parking area at Scotty Brown Bridge would not allow for increased visitation, so the project would not be expected to cause additional stress to wildlife populations.

B. HUMAN ENVIRONMENT

6. <u>NOISE/ELECTRICAL EFFECTS</u> Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Increases in existing noise levels?			X			6a.
b. Exposure of people to serve or nuisance noise levels?		X				6b.
c. Creation of electrostatic or electromagnetic effects that could be detrimental to human health or property?						
d. Interference with radio or television reception and operation?						
e. Other:						

Narrative Description and Evaluation of the Cumulative and Secondary Effects on Noise/Electrical Effects (attach additional pages of narrative if needed):

- 6a. There would be a temporary increase in noise level during construction of the parking lot on the site, but it would not be excessive and would end after completion.
- 6b. The proposed FAS will be a fairly regular source of noise to the neighborhood, from vehicles and people recreating, but the site is already used for the same purpose.

7. LAND USE Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Alteration of or interference with the productivity or profitability of the existing land use of an area?		X				
b. Conflicted with a designated natural area or area of unusual scientific or educational importance?		X				
c. Conflict with any existing land use whose presence would constrain or potentially prohibit the proposed action?		X				
d. Adverse effects on or relocation of residences?			X			7d.
e. Other:		X				

Narrative Description and Evaluation of the Cumulative and Secondary Effects on Land Use (attach additional pages of narrative if needed):

- 7d. The proposed project was developed partially in response to area landowners' concerns about public misuse of their private lands, including trespass, litter, vandalism, and other acts showing lack of consideration for private lands.

8. RISK/HEALTH HAZARDS Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Risk of an explosion or release of hazardous substances (including, but not limited to oil, pesticides, chemicals, or radiation) in the event of an accident or other forms of disruption?			X			8a.
b. Affect an existing emergency response or emergency evacuation plan, or create a need for a new plan?						
c. Creation of any human health hazard or potential hazard?						
d. ***For P-R/D-J, will any chemical toxicants be used? (Also see 8a)						
e. Other:						

Narrative Description and Evaluation of the Cumulative and Secondary Effects on Risk/Health Hazards (attach additional pages of narrative if needed):

- 8a. There is a minor risk of small herbicide spills from control of noxious weeds on the site. However, in accordance with the Region 2 Weed Management Plan, only aquatic-approved herbicides are used near water resources, and it is likely that for such a small site as the proposed Scotty Brown Bridge FAS, only manual weed-control methods would be regularly used.

9. COMMUNITY IMPACT Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Alteration of the location, distribution, density, or growth rate of the human population of an area?		X				
b. Alteration of the social structure of a community?		X				
c. Alteration of the level or distribution of employment or community or personal income?		X				
d. Changes in industrial or commercial activity?		X				
e. Increased traffic hazards or effects on existing transportation facilities or patterns of movement of people and goods?		X				9e.
f. Other:		X				

Narrative Description and Evaluation of the Cumulative and Secondary Effects on Community Impact (attach additional pages of narrative if needed):

- 9e. Under the proposed action, parking on the shoulder of Scotty Brown Bridge Road would still be prohibited for 300 yards on either side of Scotty Brown Bridge.

10. <u>PUBLIC SERVICES/TAXES/UTILITIES</u> Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Will the proposed action have an effect upon or result in a need for new or altered governmental services in any of the following areas: fire or police protection, schools, parks/recreational facilities, roads or other public maintenance, water supply, sewer or septic systems, solid waste disposal, health, or other governmental services? If any, specify:		X				
b. Will the proposed action have an effect upon the local or state tax base and revenues?		X				
c. Will the proposed action result in a need for new facilities or substantial alterations of any of the following utilities: electric power, natural gas, other fuel supply or distribution systems, or communications?		X				
d. Will the proposed action result in increased use of any energy source?		X				
e. **Define projected revenue sources						10e.
f. **Define projected maintenance costs.						10f.
g. Other:		X				

Narrative Description and Evaluation of the Cumulative and Secondary Effects on Public Services/Taxes/Utilities (attach additional pages of narrative if needed):

10e. The cost of the project is estimated at \$20,000. Funding would come from fishing license dollars.

10f. Maintenance of the site is estimated to approximately \$800/yr.

** 11. <u>AESTHETICS/RECREATION</u> Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Alteration of any scenic vista or creation of an aesthetically offensive site or effect that is open to public view?		X				
b. Alteration of the aesthetic character of a community or neighborhood?		X				
c. **Alteration of the quality or quantity of recreational/tourism opportunities and settings? (Attach Tourism Report.)			X			11c.
d. ***For P-R/D-J, will any designated or proposed wild or scenic rivers, trails or wilderness areas be impacted? (Also see 11a, 11c.)						
e. Other:		X				

Narrative Description and Evaluation of the Cumulative and Secondary Effects on Aesthetics/Recreation (attach additional pages of narrative if needed):

11c. Please see Tourism Report in Attachment A.

12. <u>CULTURAL/HISTORICAL RESOURCES</u> Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. **Destruction or alteration of any site, structure or object of prehistoric historic, or paleontological importance?		X				12a.
b. Physical change that would affect unique cultural values?		X				
c. Effects on existing religious or sacred uses of a site or area?		X				
d. ****For P-R/D-J, will the project affect historic or cultural resources? Attach SHPO letter of clearance. (Also see 12.a.)						
e. Other:		X				

Narrative Description and Evaluation of the Cumulative and Secondary Effects on Cultural/Historical Resources (attach additional pages of narrative if needed):

12a. Please see Attachment B for SHPO clearance letter.

SIGNIFICANCE CRITERIA

13. SUMMARY EVALUATION OF SIGNIFICANCE Will the proposed action, considered as a whole:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Have impacts that are individually limited, but cumulatively considerable? (A project or program may result in impacts on two or more separate resources that create a significant effect when considered together or in total.)		X				13a.
b. Involve potential risks or adverse effects, which are uncertain but extremely hazardous if they were to occur?		X				
c. Potentially conflict with the substantive requirements of any local, state, or federal law, regulation, standard or formal plan?		X				
d. Establish a precedent or likelihood that future actions with significant environmental impacts will be proposed?		X				
e. Generate substantial debate or controversy about the nature of the impacts that would be created?		X				
f. ***For P-R/D-J, is the project expected to have organized opposition or generate substantial public controversy? (Also see 13e.)						
g. ****For P-R/D-J, list any federal or state permits required.						

Narrative Description and Evaluation of the Cumulative and Secondary Effects on Significance Criteria (attach additional pages of narrative if needed):

13a. This environmental assessment identifies no significantly adverse impacts to the physical or human environment that would result from the proposed project.

PART VI. NARRATIVE EVALUATION AND COMMENT

This EA did not reveal any significant impact to the human or physical environment from the proposed action. The establishment of a permanent, formal FAS site that is owned by FWP at this historic access point would ensure continued public access, and the limited parking and active management by FWP would continue to protect fisheries resources and adjacent private lands.

APPENDIX A
HB495
PROJECT QUALIFICATION CHECKLIST

Date Feb 19, 2007

Person Reviewing Linnaea Schroeer-Smith

Project Location: Scotty Brown Bridge, Powell County. NE1/4 of Section 33, T15N, R13W

Description of Proposed Work: Montana Fish, Wildlife & Parks proposes acquiring approximately 1 acre of land adjacent to the Scotty Brown Bridge in Powell County for a new Fishing Access Site. The land would be acquired through a land exchange with Tom Meredith, who would receive approximately 7 acres of land elsewhere in the area from FWP. The new FAS would include parking for up to 6 vehicles with trailers and offloading of boats for hand launching at the site. Most, but not all, of the development would occur over an existing parking area.

The following checklist is intended to be a guide for determining whether a proposed development or improvement is of enough significance to fall under HB 495 rules. (Please check ☐ all that apply and comment as necessary.)

- ☒ **A. New roadway or trail built over undisturbed land?**
Comments: While the majority of the redesigned parking area would be overlaid over the existing parking area, some previously undisturbed land would be disturbed. Please see Comments 1a. and 1b. on page 16.
- ☐ **B. New building construction (buildings <100 sf and vault latrines exempt)?**
Comments: None
- ☒ **C. Any excavation of 20 c.y. or greater?**
Comments: Construction of the parking area would likely require excavation of 20 c.y. or greater. Please see Comment 1a on page 16.
- ☒ **D. New parking lots built over undisturbed land or expansion of existing lot that increases parking capacity by 25% or more?**
Comments: A parking lot already exists at the site, and the capacity of the new parking lot would remain at the same level (four vehicles), but the new spaces would be large enough to accommodate trailers, and thus the overall footprint of the new parking lot would be somewhat larger than that of the old.
- ☐ **E. Any new shoreline alteration that exceeds a double wide boat ramp or handicapped fishing station?**
Comments: None.

- ☐ **F. Any new construction into lakes, reservoirs, or streams?**
Comments: None
- ☐ **G. Any new construction in an area with National Registry quality cultural artifacts (as determined by State Historical Preservation Office)?**
Comments: SHPO clearance has been obtained. See Attachment B.
- ☐ **H. Any new above ground utility lines?**
Comments: None
- ☐ **I. Any increase or decrease in campsites of 25% or more of an existing number of campsites?**
Comments: None.
- ☐ **J. Proposed project significantly changes the existing features or use pattern; including effects of a series of individual projects?**
Comments: None

If any of the above are checked, HB 495 rules apply to this proposed work and should be documented on the MEPA/HB495 CHECKLIST. Refer to MEPA/HB495 Cross Reference Summary for further assistance.

Appendix B

Threatened and Sensitive Species in the proposed Scotty Brown FAS Area

A search of the Montana Natural Heritage Program (MNHP) element occurrence database (nhp.nris.state.mt.us/eoportal) indicates the following occurrences of federally listed threatened, endangered, or proposed threatened or endangered plant or animal species in the proposed project site.

Montana Species of Concern. The term "**Species of Concern**" includes taxa that are at-risk or potentially at-risk due to rarity, restricted distribution, habitat loss, and/or other factors. The term also encompasses species that have a special designation by organizations or land management agencies in Montana, including: Bureau of Land Management Special Status and Watch species; U.S. Forest Service Sensitive and Watch species; U.S. Fish and Wildlife Service Threatened, Endangered and Candidate species.

▼ Status Ranks (Global and State)

The international network of Natural Heritage Programs employs a standardized ranking system to denote global (**G** -- range-wide) and state status (**S**) (NatureServe 2003). Species are assigned numeric ranks ranging from 1 (critically imperiled) to 5 (demonstrably secure), reflecting the relative degree to which they are "at-risk". Rank definitions are given below. A number of factors are considered in assigning ranks -- the number, size and distribution of known "occurrences" or populations, population trends (if known), habitat sensitivity, and threat. Factors in a species' life history that make it especially vulnerable are also considered (e.g., dependence on a specific pollinator).

Status Ranks

Code	Definition
G1 S1	At high risk because of extremely limited and/or rapidly declining numbers, range, and/or habitat, making it highly vulnerable to global extinction or extirpation in the state.
G2 S2	At risk because of very limited and/or declining numbers, range, and/or habitat, making it vulnerable to global extinction or extirpation in the state.
G3 S3	Potentially at risk because of limited and/or declining numbers, range, and/or habitat, even though it may be abundant in some areas.
G4 S4	Uncommon but not rare (although it may be rare in parts of its range), and usually widespread. Apparently not vulnerable in most of its range, but possibly cause for long-term concern.
G5 S5	Common, widespread, and abundant (although it may be rare in parts of its range). Not vulnerable in most of its range.

Threatened or Endangered Species

1. *Felis lynx* (Lynx)

State: **S3**

Global: **G5**

U.S. Fish and Wildlife Service: **Listed Threatened**

U.S. Forest Service: **Threatened**

U.S. Bureau of Land Management: **Special Status**

The location of the proposed action falls within the boundary for element occurrence of this species but no other information is available for the project area. It is unlikely that the changes proposed at the FAS would affect this species, as the site has seen heavy human presence for several decades and is probably not utilized by lynx now.

Sensitive Species

Forest Service sensitive species are species for which the Regional Forester has determined there is a concern for population viability range-wide or in the region. The following sensitive species are located in the greater proposed Scotty Brown FAS area.

2. *Picoides arcticus* (Black-backed Woodpecker)

State: **S2**

Global: **G5**

U.S. Fish and Wildlife Service:

U.S. Forest Service: **Sensitive**

U.S. Bureau of Land Management: **Sensitive**

Three black-backed woodpecker nests were observed in 1993 in the Blackfoot-Clearwater Game Range. No updated information on this species is available in this area, but it is unlikely that the proposed project would have an impact on this population.

3. *Oncorhynchus clarki lewisi* (westslope Cutthroat Trout)

State: **S2**

Global: **G4T3**

U.S. Fish and Wildlife Service:

U.S. Forest Service:

U.S. Bureau of Land Management: **Sensitive**

Westslope Cutthroat trout are found in the Blackfoot River and many of its tributaries.

4. *Salvelinus confluentus* (Bull Trout-Columbia River)

State: **S2**

Global: **G3**

U.S. Fish and Wildlife Service: **Listed Threatened**

U.S. Forest Service: **Threatened**

U.S. Bureau of Land Management: **Special Status**

Salvelinus confluentus pop.2 (Bull Trout-Columbia River). The presence of Bull Trout within the Blackfoot River and its tributaries is widely documented and accepted. Montana FWP staff has been working to implement policies that aid in this species' recovery while still providing recreational opportunities to the public. The proposed projects at Scotty Brown FAS have been designed to meet both of these goals. The new parking area would better serve the public while decreasing noxious weed dispersal and streambank erosion and sediment loading. Because parking would still be limited, it is expected that visitation and angler pressure would remain the same or increase only slightly. In summary, the potentially adverse

effects of this project on this species would be mitigated.

Appendix C

Legal Description of Properties Proposed for Exchange

Property owned by Montana Fish, Wildlife & Parks

A tract of land located in the S1/2 of Section 28, T15N, R13W, Powell County, Montana more particularly described as:

Tract 1 of Certificate of Survey 614RB recorded as Instrument 152246, records of Powell County, Montana, containing 7.15 acres.

This property is subject to a 60' wide county road right of way across the property called Scotty Brown Bridge Road. It will not be subject to a conservation easement at the time of transfer from FWP to Meredith.

Property owned by Merediths

A tract of land located in the NE1/4 of Section 33, T15N, R13W, Powell County, Montana, more particularly described as:

Lot B-1 of the unrecorded Amended Plat of Rainbow Valley Lots A, B, and 3 provided by WGM Group, Inc.

For the purposes of appraisal, all the land in Lot B-1 should be considered the property of Thomas J. Meredith & Lynn M. Meredith, Trustees of the Meredith Family Revocable Trust.

Lot B-1 will include Portions C, D, F, H as part of the 1.08 acres shown on Lot B-1 (see Figure 5). This includes the old county right-of-way shown to the west of the current county road right-of-way. Although not yet formally abandoned, the current county road right-of-way was granted in expansion of and in lieu of the old county right-of-way. At the time the property is to be transferred to FWP, the ownership will be in Merediths' name subject only to the currently used 30' wide county road right-of-way lying west of centerline, the amended conservation easement, and the "Reservation and Grant of Real Property Covenants" to be contained in the transfer deed from Merediths to Fish, Wildlife & Parks (see Appendix D).



Appendix D
Amendment to Deed of
Conservation Easement.

tel. [406] 543.6681

nature.org

March 6, 2007

Helena S. Maclay
Maclay Law Firm
P.O. Box 9197
Missoula, MT 59807-9197

RE: Amendment to Deed of Conservation Easement
Blackfoot River (Brunner 5/Meredith) MT

Dear Helena:

Your clients, Tom and Lynn Meredith, Trustees of the Meredith Family Revocable Trust, own lands near Scotty Brown Bridge on the Blackfoot River that are subject to a Deed of Conservation Easement held by The Nature Conservancy (the "Conservation Easement"). The Merediths have asked The Nature Conservancy to amend the Conservation Easement as needed in order to permit the Merediths to convey approximately one acre of land northwest of Scotty Brown Bridge to the Montana Department of Fish, Wildlife and Parks ("FWP") to be used by FWP as a primitive site for public access to the Blackfoot River (the "Site"). In exchange, the Merediths will obtain an approximately 7 acre parcel (the "Sliver") from FWP. The Merediths will add the portion of the Sliver lying west of Scotty Brown Bridge Road to the Conservation Easement.

The Merediths propose to convey the Site to FWP subject to "Covenants and Servitudes" which are attached to this letter as Exhibit A. The Site will also remain subject to the Conservation Easement as amended by the Amendment to Deed of Conservation Easement, a copy of which is attached as Exhibit B.

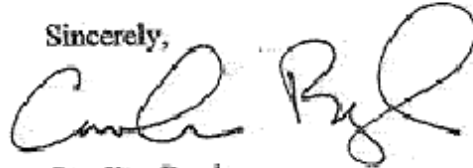
The Nature Conservancy consents to this exchange on the following conditions:

1. The Merediths and The Nature Conservancy shall enter into the Amendment to Deed of Conservation Easement in substantially the form attached as Exhibit A.
2. The Merediths shall convey the Site to FWP subject to the Conservation Easement as amended and subject to the Covenants and Servitudes in substantially the form attached as Exhibit B.
3. The Merediths shall add the portion of the Sliver lying west of Scotty Brown Bridge Road to their Conservation Easement.
4. The Nature Conservancy determines that there is no private benefit accruing to the Merediths as a result of the amendment to the Conservation Easement or the addition of a portion

of the Sliver to the Conservation Easement. In order to accomplish the exchange, the values of the two parcels will be determined by appraisals done by Paraic Neibergs. The Merediths shall supply copies of the appraisals to The Nature Conservancy which will use the appraisals to make the determination required by this paragraph.

We look forward to completion of this project as soon as feasible.

Sincerely,

A handwritten signature in black ink, appearing to read 'Caroline Byrd', written in a cursive style.

Caroline Byrd
Western Montana Program Director

EXHIBIT A TO TNC LETTER TO HELENA S. MACLAY

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

The Nature Conservancy
Western Regional Office
2424 Spruce, Suite 100
Boulder, Colorado 80302
Attention: Regional Attorney

AMENDMENT TO DEED OF CONSERVATION EASEMENT

Blackfoot River (Brunner 5/Meredith) MT

THIS AMENDMENT (the "**Amendment**") is entered into by and between Thomas J. Meredith and Lynn M. Meredith, Trustees of the Meredith Family Revocable Trust, whose address is 248 Addie Roy C200, Austin, TX 78746 (together, the "**Grantor**") and THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, whose principal place of business is 4245 North Fairfax Drive, Arlington, Virginia 22203 (the "**Conservancy**").

WHEREAS, Grantor is the owner of certain real property in Powell County, Montana, of which approximately one and 8/100ths (1.08) acre (the "**Site**"), more or less, more particularly described in Exhibit A attached hereto and incorporated herein by this reference will be affected by this Amendment as set forth herein; and

WHEREAS, by Warranty Deed dated July 31, 2000, recorded on August 2, 2000 in Book 103 of Deeds, Page 348, records of Powell County, Montana, Grantor acquired real estate from Charles E. Ball, a successor in title to Paul B. Brunner and Karen T. Brunner (the "**Brunners**"), husband and wife. The Brunners conveyed to the Conservancy a conservation easement over and across the property described therein (the "**Property**") by Deed of Conservation Easement (the "**Easement**") between Brunners and the Conservancy dated December 23, 1996 and recorded on December 31, 1996 in Book 97 of Deeds, Page 94, records of Powell County, Montana.

WHEREAS, it is to the public benefit to have Montana Fish Wildlife & Parks ("FWP") own and manage the Site for public access purposes; and

WHEREAS, Grantor by a Deed recorded immediately prior to this Amendment is now the owner of certain real property in Powell County, Montana, of which 6.86 acres, more or less, more particularly described and shown in Exhibit B attached hereto and incorporated herein by this reference (the "**Sliver**") [note: this is just the portion Merediths will obtain from FWP and retain after conveying the portion east of Scotty Brown Bridge Road to Saroc, Inc., et al.] and which will be affected by this Amendment as set forth herein; and

WHEREAS, the Grantor and the Conservancy desire to amend the Conservation Easement to permit the transfer of the Site to FWP; and

WHEREAS, Grantor and the Conservancy desire to amend the Conservation Easement to make the Sliver subject to all terms and conditions of the original Easement.

NOW THEREFORE, in consideration of the mutual agreements herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the Grantor and the Conservancy hereby agree to amend the Conservation Easement as follows:

1. Notwithstanding Section 5B of the Conservation Easement, the Conservancy hereby consents to the transfer of the Site to FWP pursuant to the Warranty Deed from Grantor to FWP to be recorded immediately after this Amendment. While the Site shall remain subject to the terms and conditions of the Easement, nothing contained therein or in this Amendment shall be deemed to prohibit or limit FWP's management and modification of the Site as a public access site for both fishing and boating, including commercial use, and parking for cars and trailers.
2. Notwithstanding Section 5D of the Easement, the Conservancy hereby consents to the relocation of the existing road to the residence located on the Property to the new location shown on Exhibit C attached hereto and made a part hereof. Grantor shall keep the Conservancy apprised of the progress of the construction of such road and shall use its reasonable efforts to minimize the effect of such construction on the Conservation Values.
3. The Sliver is hereby made subject to and encumbered by all of the terms and the Easement and shall therefore be considered as part of the Property.
4. Grantor and the Conservancy hereby ratify and confirm all of the terms of the Easement other than as expressly set forth in this Amendment. All other terms of the Easement shall remain in full force and effect.
5. An Easement Documentation Report (the "Report") has been prepared to document the condition of the Sliver as of the date of this Amendment. The Report has been reviewed and approved by both parties, each of which hereby acknowledges it to be an accurate representation of the physical and biological condition of the Sliver as of the date of this Amendment.

IN WITNESS WHEREOF, Grantor and the Conservancy have executed this Amendment on the dates listed below their respective signatures.

[Signature pages follow.]

EXHIBIT B TO TNC LETTER TO HELENA S. MACLAY
RESERVATION AND GRANT OF REAL PROPERTY COVENANTS
[to be contained in deed from Merediths to FWP]

RESERVING UNTO GRANTOR, ITS SUCCESSORS AND ASSIGNS, AND GRANTING UNTO THE OWNER OF THE LANDS DESCRIBED BELOW, AND ITS SUCCESSORS AND ASSIGNS THE FOLLOWING COVENANTS AND SERVITUDES:

The property is subject to a conservation easement held by The Nature Conservancy which is to protect and preserve open space on the property for the benefit of the public. Grantor grants and reserves these covenants and servitudes pursuant to Sections 70-17-101, *et seq.* and 70-17-201 *et seq.*, M.C.A. (2005) in order to conserve open space for park, recreational, aesthetic, and natural values on or related to the property.

A. Restrictions on the Site. The real property conveyed to FWP (the "Site") shall be held and managed in perpetuity under the following restrictions:

1. Subject to the restrictions herein, the Site may be used for public access to the Blackfoot River for both fishing and boating, including commercial use.
2. Except as provided herein, the Site shall be minimally improved, and shall remain a primitive site where users pack garbage in and out. There shall be no camping facilities and/or electricity or alternate utility service installed at or provided to the site. There shall be no drive-in boat launching facilities installed. The banks of the river shall not be modified from their state as of the date of this Deed.
3. No camping shall be permitted on the Site. Day use only may be permitted, and there shall be no night time use of any kind, including parking at the Site inside or outside the designated parking areas.
4. Within twelve (12) months of the recording of this Deed, Grantee at its sole expense shall install and maintain a fence along the exterior boundaries of the Site except where it abuts the County road adjacent to the Site where Grantee in its discretion may install and maintain such fence.
5. Grantee may establish an unpaved area for four drive-in parking spaces for vehicles with trailers on the Site. Grantee in its discretion may establish up to two additional drive-in parking spaces on the Site, for a total of six drive-in parking spaces for vehicles with trailers.
6. Grantee may install bathrooms or latrines, including without limitation temporary facilities, only after obtaining prior written permission from all of the then owners of the real property described on Exhibits [A] and [B] attached to this Deed.
7. Grantee shall minimize signage on the Site and coordinate it in order to prevent visual blight.
8. All uses of the Site shall be in compliance with all applicable laws and regulations.

B. Covenants Reserved and Granted. These covenants are RESERVED for the benefit of Grantor's adjacent real property more particularly described on Exhibit [A] [Merediths' lands] attached hereto and made part hereof. These covenants are GRANTED to the owners of real property lying to the east of the County road which forms the eastern boundary of the Site, and of the real property lying south of the Site and south of the Blackfoot River, all as described on Exhibit [B][Heart Bar Heart lands] attached hereto and made part hereof.

C. Covenants and Servitudes to Run with the Land; Properties to be Burdened and Benefited: Pursuant to the foregoing statutes, the real estate to be deemed "burdened" is the Site and the real estate to be "benefited" (with the "appurtenance") is the real estate described in Exhibits [A] and [B]. The benefits and burdens of the covenants and servitudes contained herein shall run with the titles to the Site and the lands described in Exhibits [A] and [B].

D. Duration of Covenants and Servitudes. The covenants and servitudes contained herein shall continue in perpetuity.

E. Enforcement. In the event of Grantee's [FWP] breach of these covenants and servitudes, Grantor and the then owners or any one of the owners of some or all of the real estate described in Exhibits [A] and [B] shall be entitled to all remedies available under Montana law, both legal and equitable, and including without limitation, injunctive and specific relief and compensatory damages.

F. Binding Effect. The terms of this Reservation and Grant of Covenants and Servitudes shall be binding upon and inure to the benefit of Grantor, Grantee, the owners of the lands described in Exhibits [A] and [B], and their successors and assigns.

[End of Exhibit B to TNC Letter to Helena S. Maclay.]

ATTACHMENTS

- A. Tourism Report – Department of Commerce
- B. Clearance Letter – State Historic Preservation Office

ATTACHMENT A
TOURISM REPORT
MONTANA ENVIRONMENTAL POLICY ACT (MEPA)/HB495

The Montana Department of Fish, Wildlife and Parks has initiated the review process as mandated by HB495 and the Montana Environmental Policy Act in its consideration of the project described below. As part of the review process, input and comments are being solicited. Please complete the project name and project description portions and submit this form to:

Victor Bjornberg, Tourism Development Coordinator
Travel Montana-Department of Commerce
PO Box 200533
1424 9th Ave.
Helena, MT 59620-0533

Project Name: Scotty Brown Bridge Fishing Access Site Acquisition and Improvements

Project Location: The proposed Scotty Brown Bridge FAS would be in the NE1/4 of Section 33, T15N, R13W, Powell County, Mt, within Montana FWP Region 2.

Project Description: Montana Fish, Wildlife & Parks proposes to acquire one acre of land adjacent to the Blackfoot River for inclusion in the Fishing Access Site program. Once acquired, the existing (4-vehicle) gravel parking lot would be enhanced to allow parking of up to 6 vehicles with trailers. Hand-launch boating access would be allowed.

1. Would this site development project have an impact on the tourism economy?

NO YES If YES, briefly describe:

As described the project appears to increase public access to the Blackfoot which should provide benefits for all river users, resident and non-resident.

2. Does this impending improvement alter the quality or quantity of recreation/tourism opportunities and settings?

NO YES If YES, briefly describe:

As described the project appears to increase both the quantity and quality of the recreation/tourism opportunities and settings in this area.

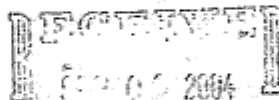
Signature Victor Bjornberg, Tourism Development, Montana Commerce Department
Date 1-22-07

ATTACHMENT B



200 0090802
**Montana Fish,
Wildlife & Parks**

1420 East Sixth Avenue
P.O. Box 200701
Helena, Montana 59620-0701



Mark Baumlér
State Historical Preservation Officer
State Historical Preservation Office
1410 8th Avenue
Helena, Montana 59620

BY: _____
**CONCUR
MONTANA SHPO**

DATE 23 Sep OF SIGNED

JTBK
FWP - PARKS
Scotty Brown
Bridge Fishing
Access Expansion

RE: Scotty Brown Bridge Fishing Access Site

September 3, 2004

Dear Mr. Baumlér:

The Department of Fish, Wildlife and Parks is proposing improvements at the Scotty Brown Bridge Fishing Access Site in Powell County. Proposed improvements will also include disposal of a parcel of approximately seven acres in exchange for no more than three acres in the same vicinity. The sites to be exchanged are located at approximately T15N R13W Sections 28 and 33. Enclosed is a copy of the report entitled *A Class III Cultural Resource Inventory of the Proposed Scotty Brown Fishing Access and Disposal Property*, prepared by GCM Services, Inc. along with a CRABS form. Both are for your review and files. The report indicates a low likelihood of negative impact to cultural resources and we feel that the project should proceed as proposed. Please review and provide any comments or concerns regarding the project.

Sincerely,

Bardell Mangum, RLA
Assistant Cultural Resources Coordinator
Design & Construction Bureau
Montana Fish, Wildlife & Parks

Encl.: report, CRABS form

cc: File 803A.2

RECEIVED

SEP 27 2004

DESIGN & CONSTRUCTION
DEPT. OF FISH, WILDLIFE & PARKS